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September 24, 2007

VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 200554

Re: Choice Communications LLC, Petition for Designation as an Eligible
Telecommunications Carrier, CC Docket No. 96-45

Dear Ms. Dortch:

Choice Communications LLC ("Choice"), through its undersigned counsel, respectfully responds to the Commission's request for additional information in support of Choice's petition for designation as an eligible telecommunications carrier ("ETC"). Choice is an integrated communications services provider offering a suite of services in the U.S. Virgin Islands, including, among others, SMR dispatch, paging, multi-channel video programming, and Internet access service to DSL and dial-up customers. In this response, Choice demonstrates that it currently operates as a common carrier, makes an additional commitment in support of its ETC petition, discusses how it will provision services over its facilities, and summarizes Choice's growth since Choice initially filed its ETC petition.

Choice is a Common Carrier

Choice currently operates as a common carrier under section 3 of the Communications Act of 1934, as amended (the "Act"),¹ and, therefore, satisfies the prerequisite to be designated as an eligible telecommunications carrier specified in section 214(e) of the Act.²

¹ 47 U.S.C. § 153(10) (defining a common carrier as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy...").

² 47 U.S.C. § 214(e)(1) (stating, a "common carrier" designated as an eligible telecommunications carrier...shall be eligible to receive universal service support...").

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Choice offers telecommunications services on a common carrier basis to both residential and business customers in the U.S. Virgin Islands. In its ETC Petition, Choice identified several telecommunications services that it provided, and still provides today, to consumers in the U.S. Virgin Islands, including SMR dispatch and paging services.³ Since filing its petition in January 2005, Choice has deployed two additional telecommunications services – local and international Special Access-type telecommunications services involving point-to-point DS1 or DS3 transport between the customer’s premises and a network point of the customer’s choosing.⁴ Although Choice currently provides its local Special Access-type transport service on its fixed wireless network, Choice now offers that service over copper transmission facilities as well to end-user subscribers in the U.S. Virgin Islands.

The Commission applies the two-part test set forth in *NARUC I* and *NARUC II*⁵ to determine whether an entity is a common carrier. Under the first part of the test, the carrier must hold itself out indifferently to the general public.⁶ The court explained that this “does not mean a given carrier’s services must practically be available to the entire public.”⁷ Indeed, it is black-letter law that “a specialized carrier whose service is of possible use to only a fraction of the population may nonetheless hold himself out to serve indifferently all potential users.”⁸ In the present case, Choice offers each of the above-mentioned services indifferently to the public.

Choice also satisfies the second part of the test, which requires that the “system be such that customers ‘transmit intelligence of their own design and choosing.’”⁹ For each of the services identified above, the customer provides the content and Choice merely transmits the customers’ content. Choice does not alter or convert the information provided by the customer, and therefore does not constitute a provider of information services. Therefore, Choice satisfies the Commission’s definition of a common carrier with respect to the above-mentioned services. Further, Choice includes these services on its Form 499A and 499Q filings with the FCC, and it

³ ETC Petition at 15. For purposes of Choice’s discussion in this section of its common carrier offerings, Choice is not including its provision of Internet access service to DSL and dial-up customers in the U.S. Virgin Islands.

⁴ With respect to its newly provided international common carrier service, Choice hereby commits that it will timely file the required reports under FCC Rules 43.61 and 43.82, 47 C.F.R. §§ 43.61 & 43.82.

⁵ *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (DC Cir. 1976) (“*NARUC I*”); *National Association of Regulatory Commissioners v. FCC*, 533 F.2d 601 (D.C. Cir. 1976) (“*NARUC II*”).

⁶ See *NARUC I*, 525 U.S. F.2d at 641. See also *Virgin Islands Telephone Corporation v. FCC*, 198 F.3d 921, 926 (D.C. Cir. 1999).

⁷ See *NARUC I*, 525 U.S. F.2d at 641.

⁸ *NARUC II*, 533 F.2d at 608.

⁹ *Id.* at 609 (quoting *Industrial Radiolocation Service*, 5 F.C.C. 2d 197, 202 (1966)).

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makes contributions to the Universal Service Fund based on its reported revenues for each of these services.

It should be noted that, with regard to the SMR dispatch and paging services, Choice does not provide these services in conjunction with its own or any other party's Internet access services, nor do Choice's customers use these services as a means of obtaining Internet connectivity. Hence, there can be no question that Choice qualifies as a common carrier rather than a provider of information services.

With regard to the local and international Special Access-type transport services that Choice provides, Choice provides these services to certain customers that do not use the service in order to obtain Internet connectivity. Further, Choice is permitted to – and does – offer these telecommunications services on a common carrier basis to certain customers who appear to use the services to obtain Internet connectivity from third parties. In the *Wireless Broadband Order*, the Commission held that wireless broadband Internet access service is an information service when the provider offers “a single, integrated service to end users, Internet access, that inextricably combines the transmission of data with computer processing, information provision, and computer interactivity.”¹⁰ By its terms, that holding does not apply to carriers, such as Choice, which do not provide a single, integrated Internet access service to end users, but rather provides the customer with solely a transmission service. When the customer obtains a transport service from Choice and Internet access from another party, the Commission's consistent precedent enables Choice to qualify as a common carrier subject to Title II.

This conclusion is buttressed by the Commission's determination that even when a single party chooses to offer both the transmission component and Internet access to customers (which Choice does not do), that party has the discretion to offer the transmission component on a common carrier basis subject to Title II.¹¹ The Commission has stated that the “wireless broadband Internet access provider may choose to offer the transmission component as a telecommunications service. We note that the transmission component of wireless broadband Internet access service is a telecommunications service . . . if the entity that provides the transmission voluntarily undertakes to provide it indifferently on a common carrier basis.”¹² The

¹⁰ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, FCC 07-30, ¶ 26 (2007) (“*Wireless Broadband Order*”).

¹¹ Telecommunications services are defined as “the offering of telecommunications for a fee to the public.” 47 U.S.C. § 153(46). The term “telecommunications” is defined as the “transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(42). Under the 1996 Act, a “telecommunications carrier” is a common carrier, and the Commission has continued to apply the two-part common carrier test when evaluating whether a carrier is providing telecommunications services to the public.

¹² *Wireless Broadband Order* ¶ 32.

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Commission also stated that if the provider chooses to provide the transmission component on a common carrier basis, then the transmission component is subject to Title II of the Act.¹³ Hence, even if Choice chose to offer Internet access services with its transport service, it would be permitted under the Commission's rules and precedent to offer the transport service on a common carrier basis. It should be noted that the Commission expressly confirmed in the Wireless Broadband Order that a fixed wireless operator may qualify as a common carrier, stating "[f]ixed wireless telecommunications services provided on a common carrier basis are generally subject to regulation under Title II of the Act."¹⁴

Lastly, as Choice explained in its Reply Comments to its ETC Petition, Choice holds an international section 214 license from the FCC, which is available only to common carriers. Choice also holds several wireless licenses issued by the Commission.¹⁵ Choice also files FCC Forms 499A and Q as a common carrier, and it contributes to the federal universal service fund and pays other federal fees based on the information contained in those reports.

Additional Commitment

In its petition for designation as an ETC, Choice made several voluntary commitments to provide high quality services to consumers in the U.S. Virgin Islands, including, without limitation, a commitment to enhance and improve facilities,¹⁶ a commitment to provide the Commission with an annual report listing the number of consumer complaints per 1,000 customers served,¹⁷ a commitment to provide the Commission with an annual report of how many requests for service Choice has denied;¹⁸ and a commitment to comply with the CTIA consumer code.¹⁹

In response to the Commission's request, Choice makes the following additional commitment: in compliance with the Commission's Lifeline rules, Choice will make available and advertise Lifeline service to qualifying low income consumers. Choice will include these services in future advertising and will reach out to community health, welfare, and employment offices to provide information to people who are likely to qualify for Lifeline service.

¹³ *Id.* ¶ 33.

¹⁴ *Id.* ¶ 3.

¹⁵ *See* ETC Petition at 4 (identifying the categories of Choice's wireless licenses).

¹⁶ *Id.* at 23.

¹⁷ *Id.*

¹⁸ *Id.* at 22.

¹⁹ *Id.* at 23.

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Choice's Provisioning of the Supported Services

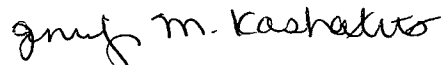
The Commission has requested that Choice provide a statement addressing how it will provision the supported services over its facilities. As stated in its petition, Choice explained that it would provide the supported services through a combination of its own facilities, its next generation broadband network, and through the resale of another carrier's facilities.²⁰ Choice intends to provide the supported services primarily using its wireless network, which includes, or may be modified in the future to include, antennas, towers, trunking, mobile switching, and interconnection facilities. As noted above, Choice also offers today a Special Access-type transport service on a common carrier basis over wireline facilities in the U.S. Virgin Islands.

Choice's Service Offerings

Since filing its ETC petition in January 2005, Choice has experienced significant growth in terms of products offered and customers served. For example, as noted above, Choice now provides both local and international Special Access-type DS1 and DS3 transport services in the U.S. Virgin Islands. Further, Choice has seen a five-fold increase over the past two years in the number of ISP customers it serves either via DSL or on a dial-up basis.

In addition to Choice's pre-existing fixed wireless network, the services and facilities used to provide these services have enhanced Choice's ability to offer and provide the supported services. For example, Choice's SMR dispatch service is currently configured such that customers can make outgoing voice calls. Choice's Special Access-type DS1 and DS3 services provide the necessary technology and facilities to enable end-user consumers to make and Choice to complete voice calls. Choice is committed to providing high quality services to its customers and to will continue to do so upon designation as an ETC.

Respectfully submitted,



Robert J. Aamoth
Jennifer M. Kashatus

Counsel for Choice Communications LLC

Attachment

cc: Jennifer McKee
Romanda Williams

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Choice Communications LLC)	
)	CC Docket No. 96-45
Petition for Designation as an Eligible)	
Telecommunications Carrier in the)	
United States Virgin Islands)	
)	

DECLARATION OF JOSEPH SHARP

My name is Joseph Sharp. I am the Chief Executive Officer of Choice Communications LLC ("Choice"). My business address is 9719 Estate Thomas, St. Thomas, Virgin Islands 00802. I provide this Declaration in compliance with the requirements of Section 1.16 of the Federal Communications Commission's (the "Commission") rules, 47 C.F.R. § 1.16.

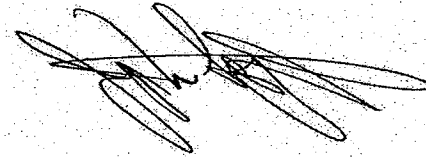
Under penalty of perjury, I hereby declare that the following is true and correct to the best of my knowledge and belief:

1. On January 13, 2005, Choice filed a Petition for Designation as an Eligible Telecommunications Carrier (hereinafter referred to as "ETC Petition"). In addition to the commitments that it made in its ETC Petition, Choice also is willing to make the following additional commitment; in compliance with the Commission's Lifeline rules, Choice will make available and advertise Lifeline service to qualifying low income consumers.

2. I have reviewed the attached supplement to Choice's ETC petition and the facts discussed therein are true and correct to the best of my knowledge.

IN WITNESS WHEREOF, the above-mentioned corporation has caused this instrument to be executed on its September 24, 2007.

Choice Communications LLC

A handwritten signature in black ink, appearing to read 'Joseph Sharp', is written over a horizontal line.

By: _____
Joseph Sharp
Chief Executive Officer